



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2012

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2012-19921

Dear Ms. Hojem:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 474715 (MTA No. 2013-0008).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information related to a rail car procurement from a specified time period, including a monthly progress report. Although you take no position on the public availability of the requested information, you believe it may implicate the proprietary interests of CAF USA, Inc. ("CAF"). You inform us CAF was notified of the request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have reviewed the information you submitted. We also have considered the comments we received from the requestor.² As the submitted information does not include the requested progress report, we assume the authority has released any information responsive to that aspect of the request that existed when the authority received the request. If not, then any such information must be released immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

³We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, why information related to the party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this decision, this office has received no correspondence from CAF. Thus, because CAF has not demonstrated any of the information at issue is proprietary for purposes of the Act, the authority may not withhold any of the submitted information on the basis of any interest CAF may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, as the authority does not claim an exception to disclosure, the submitted information must be released.

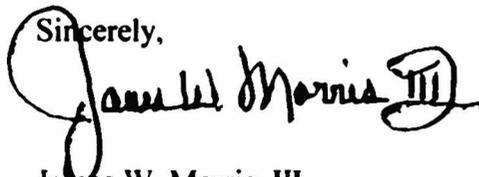
We note some of the submitted information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted materials unless an exception to disclosure applies to the information. *See Open Records Decision No. 180 at 3 (1977); see also Open Records Decision No. 109 (1975)*. A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of copyrighted materials. *See ORD 180 at 3*. A member of the public who wishes to make copies of such materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the authority must release the submitted information, but any information protected by copyright may only be released in compliance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf